

1  
2  
UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

3 )  
4 Animal Legal Defense Fund; and ) File No. 17CV4496  
Lockwood Animal Rescue Center, ) (JNE/HB)  
5 )  
6 Plaintiffs, )  
7 )  
8 vs. ) Minneapolis, Minnesota  
9 Fur-Ever Wild; Wolves, Woods & ) April 13, 2018  
Wildlife; and Teresa Lynn )  
Petter, ) 3:00 p.m.  
Defendants. ) TRO HEARING  
 ) Via Telephone in  
 ) Chambers

---

10  
11 BEFORE THE HONORABLE JOAN N. ERICKSEN  
UNITED STATES DISTRICT COURT JUDGE  
**(TRO)**

12 APPEARANCES

13 For the Plaintiffs: Animal Legal Defense Fund  
Litigation  
14 ALENE ANELLO, ESQ.  
CHRISTOPHER BERRY, ESQ.  
15 525 East Cotati Avenue  
Cotati, CA 94931

17 For the Defendants: Rinke Noonan  
18 GARY R. LEISTICO, ESQ.  
JANE ESCH, ESQ.  
19 PO Box 1497  
Saint Cloud, MN 56302-1497

20 Court Reporter: MARIA V. WEINBECK, RMR-FCRR  
1005 U.S. Courthouse  
21 300 South Fourth Street  
22 Minneapolis, Minnesota 55415

23  
24 Proceedings recorded by mechanical stenography;  
25 transcript produced by computer.

## PROCEEDINGS

(3:00 p.m.)

3 THE COURT: This Judge Erickson. We're here in  
4 chambers on the record on a motion for emergency relief.  
5 Plaintiffs, would you identify yourselves please, counsel,  
6 for the record, and let me know everybody you've got on the  
7 line on your end and then I'll turn to the defendants, but  
8 let's start with the plaintiffs.

9 MR. BERRY: Good afternoon, Your Honor. This is  
10 Christopher Berry with the Animal Legal Defense Fund, and  
11 I'm joined on the call with Alene Anello also from the  
12 Animal Legal Defense Fund.

13 THE COURT: Okay. Anybody else on the line on  
14 your end or listening in or?

15 MR. BERRY: No, I believe that's it.

18 MR. LEISTICO: Yes, good afternoon, Your Honor.  
19 This is attorney Gary Leistico, and I have attorney Jane  
20 Esch in my office, and we have no one else. We are on  
21 speaker phone, but there are only the two of us in my  
22 office.

23 THE COURT: All right. Mr. Berry, are you going  
24 to be making the argument on the Animal Legal Defense Fund's  
25 side?

1                   MR. BERRY: Yes, Your Honor.

2                   THE COURT: Okay. Go ahead.

3                   MR. BERRY: Well, essentially, we're concerned  
4 primarily with the two things that are articulated in our  
5 brief. The first is what we view as an inadequate list in  
6 violation of the Court's Order from January requiring five  
7 days advance notice of any transfer that that provision, you  
8 know, I think clearly required at a minimum that the  
9 transferee facility would be identified as part of this  
10 notice is that we had some idea or some assurance that  
11 animals weren't going to end up at an unscrupulous place or  
12 perhaps, moreover, they could even be killed, which is one  
13 of, you know, our allegations in the Complaint.

14                   So we didn't receive that information, and we're  
15 very concerned now with where these wolves could be going.  
16 Are they going to be struck in crates in someone's barn  
17 somewhere? Are they going to be sold to an unscrupulous  
18 buyer, someone who is not able to take care of them at all?  
19 It's not even clear to me that there's even a definitive  
20 transfer plan.

21                   Under Petters' declaration submitted by this  
22 defendant, there's no -- it sounds like he's having trouble  
23 even placing it, and so I couldn't see how a notice of  
24 transfer could be even if there's no plan to actually  
25 transfer the animals. So that's what we're concerned about

1                   in terms of this notice.

2                   Now, the second thing is the offering to sell the  
3                   wolf pups for sale, and it seems like there's not much of a  
4                   configuring on the staff on that one. It's just a question  
5                   of whether an animal who in the past the defendant has  
6                   called full blooded wolf, that we have DNA evidence of this,  
7                   you know, 95 percent plus wolf, with no domestic dog  
8                   identified in that DNA report that we have, whether they're  
9                   a major animal or not.

10                  If they are, then if those pups are offered for  
11                  sale without any kind of permit and contemplating interstate  
12                  travel as well, people would have to go to Minnesota for  
13                  them, and then there would be welfare concerns with that  
14                  other than that sort of transfer violation is the fact that  
15                  defendants through the veterinarian declarations submitted,  
16                  they've admitted that wolves are separated before they're  
17                  eight weeks of age, which has detrimental effects for their  
18                  welfare as laid out by our veterinarian who has expertise  
19                  with exotic animals including wolves.

20                  So I think that's, I mean those are our -- that's  
21                  our position in a nutshell. I don't know if the Court has  
22                  any questions about that or wants to hear from the other  
23                  side now.

24                  THE COURT: Who is going to speak on behalf of the  
25                  defendants? Mr. Leistico?

1 MR. LEISTICO: Yes, Your Honor. It would be Gary  
2 Leistico, I would be speaking.

3 THE COURT: All right. Go ahead.

4 MR. LEISTICO: Thank you. And so what we see is  
5 going on here is that the plaintiffs are arguing that there  
6 could be or they have concerns, but they've not articulated  
7 that there is in fact any fact to those. And we did  
8 stipulate, and I think the Court is aware, we worked with a  
9 magistrate in this matter, that we stipulated to a  
10 restraining order reluctantly because we did not think it  
11 was necessary but to satisfy the concerns of the plaintiffs,  
12 and that that is in place and that holds the status quo,  
13 gives them assurances.

14 And what they're doing now, we think is just  
15 saying that they think there could be. I mean I haven't  
16 heard anything that they have any proof or any evidence, and  
17 we don't think there is any evidence that there's any harm  
18 to any animal, whether it's listed or not. We think the one  
19 in-bark sample, and we have not gotten our's back, does not  
20 indicate it is an endangered species, that it is a high  
21 bred, and that regardless of that, that there is no  
22 indication that there is any further violation of the  
23 endangered species act that does apply, but they have  
24 concerns that it may be.

25 And so they argue in their brief that they have a

1 greater likelihood of succeeding on the merits, but they've  
2 not even identified anything on the merits that they've  
3 indicated any fact that has occurred.

4 And we are, as you can, I think, judge from the  
5 flavor of our brief, and this is something that came to us  
6 yesterday. Ms. Esch and I were on a different matter out of  
7 state, we came back, came into the office early and did the  
8 best we could to respond to this. And I appreciate the  
9 Court's time in hearing this, but that they just haven't  
10 raised anything, that there is kind of this innuendo and  
11 supposition, but they haven't identified any particular  
12 fact.

13 And we do believe, as you can see from our  
14 documents, that, and I found out this yesterday based on  
15 inquiries once the plaintiffs filed this additional request  
16 for leave from contacting the local county attorney, from  
17 the local attorneys, county attorney's office, that Lockwood  
18 without any notice to us or to my client in the state case,  
19 has apparently set up a deal with the county attorney's  
20 office to take these wolves, and it's a request in this  
21 case, which I don't think is based on any law, and it's  
22 constitutional to ask a federal court to take private  
23 property from one person and give it to another person.  
24 Maybe there's a violation of the Endangered Species Act, we  
25 don't think so. But there's no right that we can find that

1       the plaintiffs have a basis to seek the Court to just  
2       transfer jurisdiction.

3                   And we think that, at least one of the plaintiffs,  
4       Lockwood, is seeking to use the state order, which requires  
5       the animals, not just high bred animals, but also any other  
6       type of exotic animals under the ordinance to transfer to  
7       Lockwood, and that they are misusing the court system in the  
8       state proceedings to have that happen, and now they're  
9       coming into district court to make it more difficult to have  
10      anyone agree to take these animals.

11                  And so Ms. Petters is doing everything she can to  
12      comply with all of these orders, and we now have two, a  
13      state and federal matter that is being heard in expedited  
14      hearings. I have to be in Hastings, Dakota County,  
15      9:00 a.m. Monday morning to try to deal with that. And so  
16      we just don't think there's anything new here to be heard by  
17      the Judge.

18                  The parties in good faith entered into this  
19      earlier order. I did not think and my client did not think  
20      there was merit to that. We tried to work with the  
21      magistrate and the plaintiff as good faith and entered into  
22      that order, and we just don't see there's any basis to do  
23      anything further. And anything further would make it that  
24      much more difficult for these animals to find a safe place  
25      to go.

1                   So we do ask the Court to deny their request for  
2 additional relief. I think the parties are continuing to  
3 work together through discovery. There was a site visit.  
4 We have, I think, probably about 26 or 27 DNA samples that  
5 we will all hear back from. Everyone will have a better  
6 idea of what is happening with the actual DNA of those  
7 species. The one we have now, all we know is not a purebred  
8 wolf under the Endangered Species Act, and there may be  
9 additional proceedings that this Court will have to decide  
10 what that means. But at this time, I think it means it's  
11 less likely than not that this is a listed species. It is  
12 in fact a high bred.

13                   So we are asking to keep this moving forward and  
14 not just additional, you know, issue more complications than  
15 to the state proceeding to have Ms. Petters work with the  
16 local county attorney's office and the township attorney,  
17 which we're doing. I talked to both of those yesterday and  
18 today, and we're doing that in good faith, and we're trying  
19 to take care of that, but there's a lot of moving parts  
20 here, and this is making it much harder. And we believe  
21 plaintiffs want to make it much harder so they can take  
22 these animals.

23                   So we just ask the Court to deny this motion. We  
24 have no problem providing the Court notice of where these  
25 animals go, but as we set out in our declarations, and I

1 understand this came in late, and I appreciate the Court's  
2 indulgence on that.

3 But I mean she has two vehicles parked in her  
4 driveway to the best of my knowledge right now. They were  
5 there last night and this morning, and that they're  
6 following and blocking vehicles coming out of her property  
7 to keep these animals from moving, and we believe in good  
8 faith they are connected to Lockwood. We know they're  
9 contacting the county and the township and the county  
10 attorney's office.

11 So we're asking to just let Ms. Petters do the  
12 best she can under these orders, and that the plaintiffs  
13 have not provided any additional evidence to change the  
14 status quo, which is already protected by an order.

15 THE COURT: Thank you.

16 The Court has before it two separate matters then:  
17 First, is a request to enforce an aspect of the  
18 Court order that was issued pursuant to the parties'  
19 agreement some time ago. That order being the January order  
20 that you were talking about, January 8th.

21 And a second motion is a new request for emergency  
22 injunctive relief having to do with the wolf pups. Let's  
23 separate those and deal with the motion to enforce the Court  
24 order first and foremost.

25 Mr. Berry, what evidence can you point to to

1       indicate that the relevant paragraph of the January 8th  
2       order is being violated? And let me just ask you if I've  
3       identified the right paragraph. I think you're talking  
4       about paragraph 2, which reads, and this was, of course,  
5       drafted by the parties:

6                 "Defendants will provide plaintiffs with five days  
7       advance notice of any transfer of wolves to another  
8       facility. Information identifying the transferee facility  
9       provided under this provision is deemed confidential by  
10      defendants, and absent Court Order, plaintiffs shall not  
11      disclose such information to any third parties unless such  
12      information is independently obtained or publicly available  
13      from other sources."

14                Is that the provision of the order that we're  
15      talking about?

16                MR. BERRY: Correct, Your Honor.

17                THE COURT: There are two parts of that it seems.  
18       One is the advance notice, and the other is handling  
19       information that identifies the transferee facility. Are  
20       you alleging that the defendants are violating or have  
21       violated the five days advance notice of any transfer? That  
22       there's a plan transfer and that you haven't gotten your  
23       required five days notice?

24                MR. BERRY: Yes. So let me untuck that a bit.

25       There are, I think, two concerns that we identified in our

1       brief. The first is that the notice requires that the  
2       transferee facility be identified. And the letter that we  
3       received of the intent to transfer a couple days ago does  
4       not identify the transferee facility.

5               In fact, in defendant Theresa Petters' declaration  
6       submitted today, paragraph 5, you know, she says that people  
7       who might take the wolves are "extremely concerned because  
8       of the Temporary Restraining Order that requires their  
9       facility information to be provided to the plaintiff." So I  
10      think that's really the only reasonable reading of that  
11      notice provision.

12               THE COURT: Okay. Let me stop you there. First  
13      of all, setting aside whether there's a requirement to  
14      identify any transferee facility, are you saying that there  
15      have been wolves that have been transferred and that you  
16      haven't been given five days advance notice that they would  
17      be transferred?

18               MR. BERRY: No. It's about the adequacy of the  
19      notice.

20               THE COURT: Well, no, my question is have any  
21      wolves been transferred? Do you allege that wolves have  
22      been transferred?

23               MR. BERRY: No, not to the best of my knowledge.

24               THE COURT: I can only go by what is in the  
25      papers, so there's, just to be clear because I didn't see it

1           but that's not to say that it wasn't there, but, so no  
2           allegation here that there has been a transfer?

3           MR. BERRY: Correct.

4           THE COURT: What evidence do you have that there  
5           will be a transfer? I guess that's the question, whether  
6           there will be a transfer and then we can count back to see  
7           whether there was notice five days before that. What date  
8           do you allege that a transfer is going to happen?

9           MR. BERRY: So that's the tricky question, Your  
10          Honor. The Anello Declaration, Exhibit 1, contains the  
11          letter of notice that we received from the defendant. I  
12          think it was April 10th. And it says that she intends to  
13          transfer all but one wolf, so approximately 50 wolves.

14          THE COURT: Okay, hold on. Give me a second, if  
15          you would, so I can get that letter in front of me. It  
16          says, "Dear Christopher and Alene"?

17          MR. BERRY: Yes, I believe that's the one, Your  
18          Honor, one page.

19          THE COURT: All right. "Pursuant to the Court's  
20          Order, this will serve as intent to transfer. As you know,  
21          we were ordered to get everything transferred by  
22          April 16th."

23          Okay. So this is a letter saying we're going to  
24          have them all transferred by April 16th. So your complaint  
25          about that notice is that it's noncompliant with the

1       January 8th order requiring notice because you read that  
2       sentence as saying notice that says who you're going to  
3       transfer these animals to, not just that you're going to  
4       transfer them, right?

5                    MR. BERRY: Yeah, and there's two other issues  
6       with that notice as well.

7                    First of all, they're either going to transfer it  
8       before April 16th, but they don't say that they're going to  
9       wait until April, you know, April 15th to start the  
10      transfer, which would be five days after we receive the  
11      notice.

12                  And then in addition to that, the defendant's  
13      declaration from Ms. Petter today dismisses that they don't  
14      even have a place for all those wolves to go. There's not  
15      even a definite transfer to notice of them in the first  
16      place. Those would be our issues with the notice which we  
17      think is inadequate.

18                  THE COURT: So defendants, first of all, I see the  
19      letter. I see the reference to paragraph 2 of the order. I  
20      don't have any reason to think that there's going to be a  
21      transfer in less than five days.

22                  So it says we look at the five day provision of  
23      the order pursuant to that. Please note that more than five  
24      days we have to have the wolves gone. Here's your notice  
25      that we're going to have the wolves gone by then. So with

1 respect to plaintiff's argument that they might be gone  
2 sooner than that, I think that is not supported by any of  
3 the documents that I see here.

4 I do have an interest in your response to the fact  
5 that there's nothing in the notice about where the animals  
6 will be transferred to though. The plaintiffs say that the  
7 first sentence of paragraph 2 says you have to tell them  
8 where the wolves are going. They say they don't. What do  
9 you have to say about that?

10 MR. LEISTICO: This is Gary Leistico, Your Honor.  
11 I believe you're asking me to answer that question.

12 THE COURT: Yes, I am.

13 MR. LEISTICO: So my client contacts me. The  
14 plaintiffs know well that that there is this order with the  
15 township that requires that the wolves are gone by midnight  
16 on I believe it's the 16th. So it's Sunday night, this  
17 Sunday night at midnight, so they knew about that.

18 There had been a hearing at the township Monday  
19 night. That the township was going to consider whether to  
20 extend the deadline, and I understood that it was likely the  
21 township would. And I understood that "likely" doesn't mean  
22 it will. There is still a Court Order in place, but that's  
23 the information I got.

24 And so when I found out Tuesday, when I found out  
25 that the township did not grant further relief to extend

1           that deadline, I felt responsible under the Court's Order to  
2           notice the plaintiffs with the information I had, which was  
3           that she would be attempting to comply with the township  
4           order, which is to have the animals subject to that order  
5           moot by midnight on Sunday, and so I so noticed it because  
6           that's what the Court Order did.

7           THE COURT: Right.

8           MR. LEISTICO: I did not know, and I still don't  
9           know that they would be transferred by then, and she may  
10           very well be in violation of the township order.

11           THE COURT: Which is not a violation.

12           MR. LEISTICO: It's not a violation yet, right.  
13           And I simply don't know who the people are that would take  
14           it. And our point in our pleadings were that I'm not saying  
15           the two attorneys on the phone here. I have no basis to say  
16           that, and I'm not alleging that, but that Lockwood Animal  
17           Rescue Center is seeking to frustrate that ability so that  
18           the result is they get the animals Monday morning, which is  
19           exactly the relief that they've requested in this federal  
20           case, that they would take them.

21           And so I'm just doing the best I can with the  
22           information I have, which is to notice plaintiff's counsel.  
23           I'm not hiding anything. As soon as I know on Tuesday that  
24           the township denied the additional request so that she's  
25           going to do her best to get them out of there by midnight

1 Sunday, I did the best I could which is what the order  
2 required, and I said that. But no one has told me they're  
3 moving, and I have no evidence that anybody in particular is  
4 taking them, and as soon as I know that then I'll deal with  
5 that.

6 I am asking the Court to consider allowing that we  
7 notice the Court. We're not trying to ferret these animals  
8 off into the dark. We understand there's a Court Order and  
9 that the plaintiff will be or the defendant will be held to  
10 answer for that.

11 But the concern is right now that, and I literally  
12 got off the phone three minutes before this phone call with  
13 three parties that have considered taking them. They saw  
14 what plaintiffs filed yesterday in court, and they're  
15 concerned whether or not they're comfortable taking them.  
16 And I do think this is part of the effort to keep the wolves  
17 from going anywhere, so Lockwood could do it.

18 Not short, regardless of any of that, I think the  
19 Court has understood this, I noticed what I knew, and the  
20 plaintiffs are saying, well, we think something else is  
21 going on. Well, then they know more than me, and they  
22 haven't identified anything to the Court that something else  
23 is going on.

24 So, Your Honor, I don't know where they're going.  
25 I am now asking you to allow us to notice you, and if you

1 know the order is the order. I will ask my client to comply  
2 with that, and we will send that out to the two attorneys  
3 Mr. Berry and his assistant, and we will notice them. We  
4 will hold them to this order, and we will ask you for relief  
5 if they go anywhere on the Internet or otherwise because  
6 this is all over the Internet, and it is getting to be very  
7 detrimental to my client's ability to comply with these  
8 orders, the township and this one.

9 THE COURT: All right. I see no violation of the  
10 Court Order at this point. I see an ambiguity in the  
11 language that was drafted in compromise. And the ambiguity  
12 has to do with whether notice of transfer means notice of  
13 the identity of a transferee.

14 I see that starting with the second sentence of  
15 paragraph 2, that information that identifies it is  
16 considered confidential, and one could say that if the  
17 transferee is revealed, then the defendant has to keep it  
18 confidential or the plaintiff has to keep it confidential.  
19 It could be read to say you take the whole paragraph  
20 together, the most reasonable reading is that notice means  
21 notice not only of the fact but also the location. It is  
22 not clear, and we might as well take this opportunity to  
23 clarify that.

24 The concerns that are raised in the Complaint and  
25 where the focus of the January 8th Order have to do with the

1 defendant allegedly killing wolves. And if that's the  
2 concern, it doesn't matter who else has them as long as it's  
3 not somebody who the defendant has engaged to kill the  
4 wolves. But given that that's the overall concern, it seems  
5 that if the defendant just provides notice to the Court, and  
6 you can go ahead and provide that under seal, that will take  
7 care of that ambiguity.

8 So it does not appear that there's any, there's  
9 nothing for the Court to do with respect to the first aspect  
10 of the plaintiff's motion.

11 So let's turn to the second, and this is new  
12 information not covered by the original motion for a  
13 Temporary Restraining Order. And this has to do with the  
14 plaintiff says that the defendant is planning to sell wolf  
15 pups before they're eight years old and that a sale of a pup  
16 younger than eight years old, eight weeks old, constitutes  
17 harm under the act and so has to be enjoined.

18 Mr. Berry, I have taken a look. Actually, I have  
19 it in front of me. You're talking about the Dr. Rebecca  
20 Walser wolf pup?

21 MR. BERRY: Correct.

22 THE COURT: And so I was looking for something in  
23 here that talks about specifically the eight weeks because  
24 some of what Dr. Walser talks about applies to brand new  
25 pups.

1                   For example, paragraph 4, knee I don't neonatal  
2                   wolf pups, born blind, et cetera. You can't tell how long  
3                   those paragraph 4 infant characteristics last.

4                   Paragraph 5 talks about the first weeks. I don't  
5                   know how long. There's a reference of very young. I don't  
6                   know exactly what that means.

7                   And then paragraph 7 does specifically talk about  
8                   the first eight weeks, and that being important to lifelong  
9                   well-being, behavioral health. A wolf is a pack animal, and  
10                  they rely on their mother and other pack members to  
11                  socialize and learn appropriate behavior. And I can't tell  
12                  if that is a reference to wolves that are in the environment  
13                  of captivity that these wolves are. I think that there's  
14                  some case law that talks about there being a little bit of a  
15                  different standard for animals, at least animal hybrids that  
16                  are kept in a -- like a -- not in the wild.

17                  And then I'm looking at the, there's another  
18                  affidavit from a different veterinarian, and this is  
19                  supplied by the defendant, I guess. This is this Dr. Sharon  
20                  Dreyfuss, and that veterinarian says that they have  
21                  familiarity with the defendant's actual handling of wolf dog  
22                  puppies. It says that they're wolf dogs, and alleges that  
23                  in paragraph 4 "the removing of puppies prior to eight weeks  
24                  in a situation where the wolf dogs will not be in the wild  
25                  is beneficial."

1                   So is there anything else, Mr. Berry, that you  
2 want to say in support of your -- I guess what is the motion  
3 exactly? And what do you allege, what are you asking for  
4 precisely?

5                   MR. BERRY: Your Honor, we're asking for a Court  
6 Order that would prohibit separating of the wolf pups from  
7 their mothers before they're eight weeks old. Your Honor,  
8 if I could just touch on a couple of the concerns that you  
9 articulated.

10                  You know, first, our veterinarian does have  
11 experience with exotic animals, which is something that this  
12 defendant doesn't have. But, you know, pause that for a  
13 second. And then, additionally, what we're talking about  
14 here are endangered animals. I don't think that hybrid  
15 would be a fair way to characterize them.

16                  THE COURT: Well, if I could just interrupt you.  
17 The advertisement that you've attached, which I think is the  
18 basis for your motion, talks about hybrids. So is there  
19 something that would support your assertion that wolves and  
20 not hybrids are being talked about in the sale?

21                  MR. BERRY: Yes, Your Honor. So we performed a  
22 site visit as part of our discovery a month ago, and so only  
23 I don't think there's a disagreement between what I call  
24 wolves, they're calling wolf dogs. There's not some other  
25 category of animal that the defendants have custody over.

1                   So the real question is if, how to, you know, what label to  
2 give those animals.

3                   THE COURT: Okay. So even though the  
4 advertisement that gives rise to your temporary restraining  
5 order motion says "hybrids," you say that's not really  
6 referring to hybrids. They're advertising wolf dog mixes  
7 for sale, but we say that if they have anything for sale  
8 it's a real wolf. I mean it's a hundred percent wolf.

9                   MR. BERRY: Precisely, Your Honor. Or it's not a  
10 hundred percent or just a hair underneath, which even in the  
11 wild wolf population, as I understand it, you can't find  
12 anything that's a hundred percent due to the way the  
13 genetics work and so forth.

14                   So being, you know, that they are gray wolves or  
15 very, very, very high percentage gray wolf, they, you know,  
16 they are endangered animals and seem like they're being  
17 essentially treated as pets here being born and separated  
18 from their mothers at a few weeks of age and reared as, you  
19 know, essentially needed animals, pets.

20                   Even if they were dogs, you know, I think it's  
21 pretty much common sense that you're not supposed to  
22 separate them before eight weeks of age.

23                   THE COURT: It might be common sense, but it might  
24 not be something that this Court has jurisdiction over.

25                   MR. BERRY: Sure, Your Honor.

1                   Then, lastly, with regards to whether captive and  
2 endangered wild life are treated differently. I'm not aware  
3 of any distinction between the two as far as the harm and  
4 harass standards go. In fact, in the Eighth Circuit just  
5 ruled yesterday on an endangered species act case that my  
6 organization is also involved with, and it doesn't make any  
7 distinction between the, you know, the husbandry or welfare  
8 or take standards.

9                   THE COURT: No, that obviously wasn't part of the  
10 tiger and lemur discussion. But since you bring up that  
11 case, the Court there did talk about the Code of Federal  
12 Regulations definition of harm, and could you articulate  
13 your argument about why sale or why separation before eight  
14 weeks qualifies as harm not in a common sense way but in a  
15 Code of Federal Regulations definition way as cited by the  
16 circuit?

17                   MR. BERRY: Well, Your Honor, without having  
18 everything mapped out in front of me right now, I believe  
19 it's with this general husbandry practices, and I'm not  
20 aware of any general husbandry practice that allows for  
21 separation of these endangered animals or wolves at a young  
22 age from their parents for the pet trade.

23                   THE COURT: Okay. Let me hear from the  
24 defendant's counsel on this point. We'll call it the pup,  
25 wolf pup, wolf hybrid pup point.

1 MR. LEISTICO: Gary Leistico, thank you, Your  
2 Honor. I mean what we see plaintiff's as arguing is  
3 everything harmed unless it's specifically allowed by some  
4 CFR statute is not harm, and I think that's putting it  
5 upside down. They can't cite to a specific code or statute  
6 that what they are claiming is harm is harm, and yet they're  
7 saying because it's not negatively considered; therefore,  
8 it's harm, and they're asking you to consider it, so.

9                   And I think the Court's point is correct. There's  
10                   nothing that would indicate that that's harm in a legal  
11                   sense, whether that would sound bad or not from a human  
12                   sense I think is a different issue. The courts haven't  
13                   allowed that as a basis of harm.

14 And, moreover, the declaration of Dr. Dreyfuss,  
15 our vet, and I spoke to her at length about this this  
16 morning, and these are not wild animals. These are captive  
17 animals, and the realities are always going to be captive  
18 animals. It would be probably harmful to release them to  
19 the wild if not illegal under state law and federal law.  
20 They would never survive. And that was our vet's point is  
21 that they're going to be around people, and they need to go  
22 socialize with other animals and with humans for the safety  
23 of animals and for the people that are handling the animals  
24 and that is why this is done.

25 It's also a matter that these puppies are often

1       harmed by the mothers in these situations, and so to remove  
2       the puppies from the mother is actually a safeguard to the  
3       pups. And I don't know, and I've not heard any facts that  
4       these animals are removed at any particular time. I would  
5       imagine a week is different than eight weeks, but I can't  
6       find any different legally and practically other than I  
7       agree with plaintiffs it's a lot of work. I mean I've had  
8       kids. We've had dogs. We've had puppies that had trouble  
9       with the parents, and we fed them, and it's a great deal of  
10       work, but it's not harm to the animal to commit to a great  
11       deal of work.

12               And so we just don't think there's any merit to  
13       this. And I mean plaintiffs want the Court to grant them  
14       possession and ownership of these animals, and they are  
15       wolves for warriors. I mean their purpose in these animals  
16       and what they want to use them for is not to try to  
17       reintegrate them into the wild, but it is to take these  
18       animals around to help people socialize. That's a  
19       different, I mean regardless of the merits on that, that's  
20       the purpose of that. So it's disingenuous for the  
21       plaintiffs to say for defendants to do exactly what the  
22       plaintiffs want to do with the animals, that that somehow is  
23       illegal and harmful.

24               And, again, I think they're supposing it could be,  
25       and they've not cited to any authority because there is no

1 authority for it. So we just ask for the Court to enjoin  
2 this. I mean we understand that these are protected  
3 species. We don't think they are, and the Court will answer  
4 that at some point. But if they are, this isn't a legal  
5 harm, and if they're not endangered species, and they're not  
6 subject to the ESA, then it's not a merit what these laws  
7 say. But regardless, even if the laws apply, there is no  
8 harm shown here.

9 MR. BERRY: If I could interject one point on the  
10 authority, we did cite another district court opinion from  
11 just a couple months ago, *People For Ethical Treatment of*  
12 *Animals v. The Wildlife In Need*, 2018 Westlaw 828461 from  
13 Indiana, And a preliminary injunction was entered in that  
14 case to prevent separation of tiger cubs from their mothers.

15 THE COURT: Thank you. Yeah, in that case, I did  
16 appreciate that citation and read the case. In that case,  
17 the tiger cubs were being subjected to cruel and inhumane  
18 treatment during the separation, so the Court's focus was on  
19 the separation for the purpose of subjecting these, I don't  
20 know what they are, tiger cubs, the baby tigers to like swim  
21 time and some other things that were really distressing to  
22 the infant animals. And so that case cannot be read as  
23 standing for the proposition that there's some particular  
24 number of weeks old that a young wolf or wolf dog  
25 combination has to be before it can be reared by humans as

1 opposed to its mother.

2 So that seemed like a -- well, I guess I won't say  
3 more about what the Court described some -- I guess I will.  
4 Some pretty bad things that were being done to those tigers.

5 MR. BERRY: Yes, Your Honor. Certainly, there  
6 were additional allegations in there. It's not a perfect  
7 analog. I do think it stands for the proposition, strongly  
8 supports the proposition that, you know, even the separation  
9 itself absent those additional abuses has detrimental health  
10 and behavioral effect when at the end of the day these are  
11 wild and endangered animals.

12 THE COURT: Okay. Thank you. All right.

13 MR. BERRY: Thank you, Your Honor.

14 THE COURT: So we have the affidavits of the  
15 doctors. I do not have any indication of an actual  
16 impending sale. We have the shadow of the state case  
17 hanging over this hearing. The state case being one where  
18 the Dakota County District Judge said that the animals have  
19 to be gone by Monday and giving the sheriff the authority to  
20 enforce that order. So there's only so much that can happen  
21 between now and then anyway.

22 The Court is not persuaded that the extraordinary  
23 powers of injunction are needed to prevent the sale of pups.  
24 Assuming that they either are all wolf or that the wolf dog  
25 hybrid qualifies under the ESA, 50 Code of Federal

1       Regulations Section 17.3 defines harm for purposes of taking  
2       an endangered species specimen as an act, which actually  
3       kills or injures wild life. Such act may include  
4       significant habitat modification or degradation where it  
5       actually kills or injures wild life by significantly  
6       impairing essential behavioral patterns including breeding,  
7       feeding or sheltering.

8           At this time, the Court is not persuaded that the  
9       plaintiff has met its burden to show a likelihood of success  
10      on the merits on that claim. So that motion is denied.

11           I am mindful of the fact that this will not be the  
12      end of the matter and that a lot of the urgency that gives  
13      rise to the fact that we're having an emergency hearing here  
14      this afternoon arises not from anything really having to do  
15      in the federal case but because you've got a time line  
16      looming in the state case.

17           The state case will proceed as it will proceed.  
18       What I'm going to let you know is that the Magistrate Judge  
19      in this case is expected to be in town next week, and I  
20      imagine would be available should you need anything else on  
21      Monday or Tuesday if something comes up. I think it's a  
22      little unforeseeable exactly what's going to happen on  
23      Sunday and Monday.

24           But that's going to conclude the hearing with  
25      respect to these specific motions. So that's the motion to

1 enforce the Court order, but the Court order of January 8th  
2 is modified as I set out earlier and that again is to  
3 require that the five-day advance notice include  
4 identification of the transferee facility. Identity of the  
5 transferee facility may be provided to the plaintiffs in  
6 which case plaintiffs will handle that information as set  
7 forth in paragraph 2 of the January 8th Order. Or at  
8 defendant's option, it may provide that identification  
9 information to the Court and that may be filed under seal.

10 The motion for emergency injunctive relief on the  
11 new basis not set forth specifically in the Complaint that's  
12 on file or in the original Temporary Restraining Order  
13 motion materials is denied.

14 So that concludes the hearing. And, again, if you  
15 need or want to communicate with the Magistrate Judge, you  
16 should do that directly as the need arises, and I will let  
17 the Magistrate Judge know that you may be in contact.

18 All right. There being no further business, we  
19 will be in recess. Thank you both.

20 COUNSEL (collective response): Thank you, Your  
21 Honor.

22 (Court adjourned at 3:48 p.m.)

23 \* \* \*

24

25

REPORTER'S CERTIFICATE

I, Maria V. Weinbeck, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/ Maria V. Weinbeck

Maria V. Weinbeck, RMR-FCRR